

REMARKS

This Amendment is being submitted simultaneously with the Request for Continued Examination. Claims 2, 3 and 8 have been amended. No new matter has been added. Claims 1-14 remain pending in this application with claims 1 and 2 being the only independent claims. Reconsideration in view of the amendments and remarks presented herein is respectfully requested.

On a preliminary note, Applicants wish to thank the Examiner for agreeing to the telephone interview conducted on November 20, 2006. A brief summary of the claims and arguments presented is provided herein. In particular, the topic of discussion was the Examiner's comments in the Advisory Action mailed October 31, 2006. Applicants' representative traversed the prior art rejection with respect to claim 1 and specifically the proper test for rearrangement of parts taught by a prior art reference to render a claimed invention obvious. No agreement was reached with respect to this claim. As for claim 2, the Examiner clarified that the term "crossing" is being broadly interpreted to mean "intersecting" on which elastic paths 11, 12, 13, 14 of Fernfors reads. To overcome this rejection, Applicants' representative proposed amending the claim for clarification by substituting the phrase "extending across" for "interpreting". The Examiner acknowledged that such amended claim language appears to be patentable over Fernfors. Claims 3 & 8 were also discussed whereby the Examiner stated that points A and B in Figure 1 of Fernfors reads on the present claimed invention. Applicants' representative proposed amending the claim language to specifically state that the overlap occurs along the central lateral axis X-X. Once again the Examiner agreed that such amended language appears to be patentable over Fernfors. Lastly, with respect to claims 7 & 12 the Examiner was persuaded by the arguments asserted by Applicants' representative and has agreed to reconsider these arguments if represented.

Turning to the prior art rejections, claims 1-12 are rejected under 35 U.S.C. §103(a) as anticipated by U.S. Patent No. 6,179,820 (Fernfors). Applicants respectfully traverse the prior art rejection of claims 1-12 for the reasons presented below.

Claim 1

Independent claim 1, as amended, states “third leg part elastic bodies are disposed along the flap parts at both sides of said main absorbent article body part, wherein the first, second and third leg part elastic plastic bodies intersect with each other five times” (emphasis added). In contrast, Fernfors. discloses (Figure 1) that the curved paths 11, 12, 13, 14 intersect with each other only four times, as indicated by points 28, 29, 30, 31.

In rejecting claim 1, the Examiner states

“By arranging the elastic members taught by Fernfors such that the paths 11, 12, 13, 14 have only one intersecting point in the absorbent core area 9 rather than one each in the front and waist regions, i.e., the diamond shape is collapsed by arranging points of inflection 30 and 31 in Fig. 1 such that they are superimposed on one another. Such a rearrangement would cause the paths 12 and 14 of elastic elements 10 to intersect the leg elastic members at edges 5, 6, thus creating an arrangement of elastic members 10 and leg elastics that is substantially identical to that of claimed Fig. 10. Thus Fernfors renders independent claims 1 and 2 unpatentable. Since there is no addition or removal of elastic elements or structural features, merely a rearrangement of said elements which would not destroy the function of the device of Fernfors as stated in the prior Office Action, Examiner has made a proper prima facie case of obviousness.” (Advisory Action mailed October 31, 2006, p. 2, ll. 4-11)

Thus, the Examiner acknowledges that Fernfors fails to disclose or suggest five intersections but maintains that the rearrangement of paths 11, 12, 13, 14 (which intersect only four times) as disclosed in Fernfors, as found in claim 1, would have been obvious.

MPEP §2144.05(C) entitled Rearrangement of Parts states that “The mere fact that a worker in the art could rearrange the parts of the reference device to meet the terms of the claims on appeal is not by itself sufficient to support a finding of obviousness. The prior art must provide a motivation or reason for the worker in the art, without the benefit of appellant’s specification, to make the necessary changes in the reference.” *Ex parte Chicago Rawhide Mfg. Co.*, 223 USPT 351, 353 (Bd. Pat. App. & Inter. 1984)) Applicants submit that Fernfors expressly teaches away from such modification and therefore fails to render the present claimed invention obvious. “If the proposed modification or combination of the prior art would change the principle of operation of the prior art invention being modified, then the teaching of the references are not sufficient to render the claims *prima facie* obvious.” *In re Ratti*, 270 F.2d 810, 123 USPQ 349 (CCPA 1959). As expressly disclosed in Fernfors, the arrangement of paths 11,

12, 13, 14 with four intersecting points defines an area of the receiving zone which bulges under the influence of the elastic elements and forms a bowl-shape. (Col. 3, ll. 1-10) These bowl-like structures collect urine and feces. (Col. 2, ll. 59-59) Modification of Fernfors so that the paths 11, 12, 13, 14 intersect in five rather than three points would eliminate these bowl shape bulge areas thereby changing the principle of operation of the prior art invention. Accordingly, Applicants assert that the Examiner has failed to establish a *prima facie* case of obviousness.

Claim 2

Independent claim 2 has been amended to recite that the second leg part elastic bodies have an intermediate part “extending across said crotch part in a direction substantially parallel to the lateral axis” (emphasis added). To the contrary, Fernfors fails to disclose an intermediate part of elastic elements 10 forming curved paths 11, 12, 13, 14 extending across the crotch part in a direction substantially parallel to the central lateral axis X-X.

Claims 3 & 8

Claims 3 and 8 have been amended to clarify that “the third leg part elastic bodies, which are positioned at the flap parts of said main absorbent body part, have at least a portion thereof disposed along the central lateral axis X-X outward beyond the leg parts at the respective sides of the outer layer sheet” (emphasis added). To the contrary, in Fig. 1 of Fernfors nothing is disposed along the central lateral axis X-X outward beyond the leg edge-portions 5, 6.

Claims 4 & 9

Dependent claims 4 and 9 state “the third leg part elastic bodies are positioned at least respectively between the vicinities of the positions at which the first leg part elastic bodies and the outer side parts of the flap parts at the respective sides of the main absorbent article body part intersect and the vicinities of the positions at which the second leg part elastic bodies and the outer side parts of the flap parts at the respective sides of the main absorbent article body part intersect.”

In addressing this limitation the Examiner states “The portions of paths 11, 12, 13, 14 that extend from the intersection points towards the side edges are angled away from the leg parts of

pants 1 and terminate below substantially all of the respective side flap parts in each waist region 2, 3 as can be seen in Figs. 1 and 3. (Claim 4)(Col. 5, lines 18-20)” (Page 3, line 23 through Page 4, line 2 of April 16, 2006 Office Action) Applicants submit that the Examiner’s remarks fail to read on the present claimed limitation. In claim 1, the Examiner states that the curves 11, 12, 13, 14 from the point of intersection are analogous to the claimed third leg part elastic bodies. Assuming, *arguendo*, that this interpretation is correct then the limitation found in claims 4 and 9 would require that this portion of the curved paths 11, 12, 13, 14 be positioned between two intersections, namely, (i) a first intersection of the first leg part elastic bodies and the outer side parts of the flap parts at the respective sides of the main absorbent article body, and (ii) a second intersection of the second leg part elastic bodies and the outer side parts of the flap parts at the respective sides of the main absorbent article body part intersect. Fernfors shows (Figures 1 & 3) only a single point of inflection 30, 31 of the curved paths intersecting with each flap part to the respective sides of the absorbent core 9, rather than two such intersections as found in claims 4 and 9.

Claims 5 & 10

Claims 5 and 10 depend from independent claims 1 and 2, respectively. Therefore, Applicants submit that claims 5 and 10 are patentable over the prior art of record for at least the reasons provided above with respect to claims 1 and 2, respectively.

Claims 6 & 11

Dependent claims 6 and 11 provide “each of the first leg part elastic bodies and second leg part elastic bodies is arranged to be lower in tensile strength at the intermediate part, positioned in the direction of crossing said crotch part, than at the one end side and the other end side that are positioned along the leg parts at the respective sides”. In rejecting claims 6 and 11, the Examiner states “The nature of the paths 11, 12, 13, 14 formed by elastic elements 10, i.e., their location and points of intersection, result in a lower tensile strength at the point of intersection 28 when compared to the side flaps. The intersection points are defined by the intersection of two elastic elements, which will decrease the tensile strength of the main absorbent body at those points as opposed to the flaps because the elements 10 are integrated

between the outer cover 20 and barrier layer 8 (Col. 9, lines 33-38), where the total occupied by elastic is lower and thus the tensile strength is greater.”

The Examiner’s remarks lack any support or disclosure in the prior art reference itself and thus clearly claims 6 and 11 are not obvious in view of Fernfors. Furthermore, the Examiner’s arguments as best understood by the applicants is that the tensile strength at the intersections 28 of the curved paths 11, 13 will be less than at the flaps because the elastic 10 is integrated between the outer cover 20 and barrier layer 8. Note that in cross-sectional view shown in Figure 2 all of the elastic elements 10 including those at the flaps are integrated between the outer cover 20 and barrier layer 8. Accordingly, no basis exists in the prior art reference for the Examiner to draw such an inference.

Claims 7 & 12

Dependent claims 7 and 12 state “the outer layer sheet has central elastic bodies, positioned along the longitudinal direction of the absorbent body at the width direction center of the absorbent body that is positioned at the surface side of the outer layer sheet”. In rejecting claims 7 and 12 the Examiner states “Fernfors teaches that elastic elements 10 are also arranged on the inside of core 9 that is centrally located in pants 1. (Col. 10, lines 25-27)” (Page 4, lines 15-16 of April 19, 2006 Office Action) Claims 7 and 12, however, expressly call for the outer layer sheet to have central elastic bodies, not the absorbent core 9. Referring to the cross-sectional view in Figure 2, there clearly is no centrally located elastic elements 10 in outer layer 20, as expressly recited in claims 7 and 12.

In the Advisory Action the Examiner asserts that “This entire claim while it sets forth that the elastic bodies are disposed on said out layer sheet, sets forth limitations of positioning directed to points on the core itself.” Applicants respectfully submit that there is nothing improper about disclosing the central elastic bodies as being disposed on the outer layer sheet, while further describing their arrangement with respect to the absorbent body itself. For the reasons expressed above with respect to the preceding paragraph, Fernfors fails to disclose or suggest central elastic bodies on the outer layer sheet, as found in claims 7 and 12.

Claims 13 & 14

New dependent claims 13 and 14 specify that “the flap part is an impervious sheet”. Despite not expressly disclosing which element of Fernfors reads on the “flap part” limitation, Applicants best understanding of the Examiner’s position is that claimed flap part reads on that portion of the permeable layer 7 that extends outward from the absorbent core 9 and is fastened to the peripheral edge of impervious layer 8, as shown in Figure 2. Claims 13 and 14 are therefore patentable over the art of record, since layer 7 is permeable rather than made from an impervious sheet.

For the foregoing reasons applicants submit that independent claims 1-14 are patentable over the art of record. Applicants submit that the application is now in condition for allowance and passage to issuance is requested.

CONDITIONAL PETITION FOR EXTENSION OF TIME

If entry and consideration of the amendments above requires an extension of time, Applicants respectfully request that this be considered a petition therefor. The Assistant Commissioner is authorized to charge any fee(s) due in this connection to Deposit Account No. 503462.

ADDITIONAL FEE

Please charge any insufficiency of fees, or credit any excess, to Deposit Account No. 503462.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Cheryl F. Cohen", written over a horizontal line.

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